



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2014-0409; FRL-9914-84-OAR]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Determination of Attainment for the 2008 Lead National Ambient Air Quality Standard for the Lyons Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to determine that the Lyons, Pennsylvania (PA) nonattainment area (hereafter also referred to as the “Lyons Area” or “Area”) has attained the 2008 lead (Pb) national ambient air quality standard (NAAQS). This proposed determination of attainment is based upon certified, quality-assured, and quality-controlled ambient air monitoring data from 2011-2013 which shows that the Area has monitored attainment for the 2008 Pb NAAQS. If EPA finalizes this proposed determination of attainment, the requirements for the Lyons Area to submit an attainment demonstration, associated reasonably available control measures (RACM), a reasonable further progress (RFP) plan, contingency measures, and other planning requirements related to attainment of the standard shall be suspended for so long as the Lyons Area continues to attain the 2008 Pb NAAQS.

DATES: Written comments must be received on or before [insert date 30 days from date of publication].

ADDRESSES: Submit your comments, identified by Docket ID Number EPA-R03-OAR-2014-0409 by one of the following methods:

- A. www.regulations.gov. Follow the on-line instructions for submitting comments.
- B. E-mail: fernandez.cristina@epa.gov.
- C. Mail: EPA-R03-OAR-2014-0409, Cristina Fernandez, Associate Director, Office of Air Program Planning, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.
- D. Hand Delivery: At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA-R03-OAR-2014-0409. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or e-mail. The www.regulations.gov website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification,

EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the www.regulations.gov index.

Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form.

Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

FOR FURTHER INFORMATION CONTACT: Ellen Schmitt, (215) 814-5787, or by e-mail at schmitt.ellen@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document “clean data determination” and “determination of attainment” are used interchangeably, “Agency” may be used to imply the EPA, and “3-year period” represents three (3) consecutive calendar years. For detailed information regarding this proposed rulemaking action, EPA prepared a Technical Support Document (TSD). The TSD can be viewed at <http://www.regulations.gov>.

I. Background

On November 12, 2008 (73 FR 66964), EPA established a 2008 primary and secondary Pb NAAQS at 0.15 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$) based on a maximum arithmetic 3-month mean concentration for a 3-year period. *See* 40 CFR 50.16. On November 22, 2010, (75 FR

71033), EPA published its initial air quality designations and classifications for the 2008 Pb NAAQS based upon available air quality monitoring data for calendar years 2007-2009. These designations became effective on December 31, 2010.¹ The Lyons Area, which is located in Berks County and is bounded by Kutztown Borough, Lyons Borough, Maxatawny Township, and Richmond Township, was designated nonattainment for the 2008 Pb NAAQS. *See* 40 CFR 81.339.

On March 31, 2014, the Commonwealth of Pennsylvania, through the Pennsylvania Department of Environmental Protection (PADEP), submitted a letter requesting EPA to make a determination that the Lyons nonattainment area has attained the 2008 Pb NAAQS, based on certified, quality-assured, and quality-controlled air monitoring data from 2011 through 2013.

II. Summary of Proposed Action

EPA is proposing to determine that the Lyons Area has “clean data” for the 2008 Pb NAAQS. This proposed action is based upon certified, quality-assured, and quality-controlled ambient air monitoring data for the 2011-2013 monitoring period that shows that the Area has monitored attainment of the 2008 Pb NAAQS.

III. Effects of Proposed Action

If this proposed determination of attainment is made final, the requirements for the Lyons Area to submit an attainment demonstration together with RACM (encompassing reasonably available control technologies (RACT)), an RFP plan, contingency measures for failure to meet RFP goals,

¹ EPA completed a second and final round of designations for the 2008 Pb NAAQS on November 22, 2011; no additional areas in Pennsylvania were designated as nonattainment under this rulemaking. *See* 76 FR 72097.

and any other planning SIP requirements related to attainment of the 2008 Pb NAAQS will be suspended. Attainment deadlines would be suspended until such time, if any, that EPA subsequently determines that the Area has violated the 2008 Pb NAAQS. The Agency's proposal is consistent with EPA's regulations and with its longstanding interpretation of subpart 1 of part D of the Clean Air Act (CAA).

IV. EPA's Clean Data Policy

Following enactment of the CAA Amendments of 1990, EPA promulgated its interpretation of the requirements for implementing the NAAQS in the general preamble for the Implementation of Title I of the CAA Amendments of 1990 (General Preamble). *See* 57 FR 13498, 13564 (April 16, 1992). In 1995, based on the interpretation of CAA sections 171 and 172, and section 182 in the General Preamble, EPA set forth what has become known as its "Clean Data Policy" for the 1-hour ozone NAAQS. *See* Memorandum from John S. Seitz, Director, Office of Air Quality Planning Standards, "RFP, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard" (May 10, 1995). In 2004, EPA indicated its intention to extend the Clean Data Policy to the fine particulate matter (PM_{2.5}) NAAQS. *See* Memorandum from Steve Page, Director, EPA Office of Air Quality Planning and Standards, "Clean Data Policy for the Fine Particle National Ambient Air Quality Standards" (December 14, 2004).²

EPA has applied its interpretation under the Clean Data Policy in many rulemakings, suspending certain attainment-related planning requirements for individual areas, based on a determination

² Although the D.C. Circuit remanded the 1997 PM_{2.5} Implementation Rule on January 4, 2013, the decision did not cast doubt on EPA's interpretation of statutory provisions, including EPA's Clean Data Policy interpretation.

of attainment, or “clean data” determination. *See* 69 FR 21717 (April 22, 2004) (San Francisco Bay Area, 1-hour ozone), 75 FR 6570 (February 10, 2010) (Baton Rouge, Louisiana, 1-hour ozone), 75 FR 27944 (May 19, 2010) (Coso Junction, California, PM₁₀), 77 FR 52232 (August 29, 2012) (Bristol, Tennessee, Pb), 78 FR 66280 (November 5, 2013) (Bellefontaine, Ohio, Pb). For more information about the history, rationale and application of the Clean Data Policy, *see* 77 FR 35653–35654.

EPA also incorporated its interpretation under the Clean Data Policy in its implementation rules. *See* Clean Air Fine Particle Implementation Rule, 72 FR 20586 (April 25, 2007); Final Rule To Implement the 8-Hour Ozone National Ambient Air Quality Standard--Phase 2, 70 FR 71612 (November 29, 2005). The Court of Appeals for the District of Columbia Circuit (D.C. Circuit) upheld EPA's rule embodying the Clean Data Policy for the 1997 8-hour ozone standard. *NRDC v. EPA*, 571 F.3d 1245 (D.C. Cir. 2009). Other courts have reviewed and considered rulemakings applying EPA's Clean Data Policy, and have consistently upheld them. *Sierra Club v. EPA*, 99 F. 3d 1551 (10th Cir. 1996); *Sierra Club v. EPA*, 375 F. 3d 537 (7th Cir. 2004); *Our Children's Earth Foundation v. EPA*, No. 04-73032 (9th Cir. June 28, 2005 (Memorandum Opinion)), *Latino Issues Forum v. EPA*, Nos. 06-75831 and 08-71238 (9th Cir. March 2, 2009 (Memorandum Opinion)).

EPA's Clean Data Policy represents the Agency's interpretation that certain requirements of subpart 1 of part D of the CAA are, by EPA's terms, not applicable to areas that have attained the NAAQS before the applicable attainment date.³ The specific requirements that are

³ This discussion refers to subpart 1 as this subpart contains the general and substantive attainment-related requirements for all NAAQS. Subpart 5 establishes additional requirements for the lead NAAQS,

inapplicable to an area attaining the standard are the requirements to submit a SIP that provides for implementation of all: RACM, RFP, and contingency measures for failure to meet deadlines for RFP and attainment by the attainment date.

It is important to note that an area's obligation to submit an attainment demonstration and related planning submissions is suspended only for so long as the area continues to attain that standard.

If EPA subsequently determines, after notice-and-comment rulemaking, that the area has violated the standard, the requirements for the State to submit a SIP to meet the previously suspended requirements would be reinstated. It is likewise important to note that the area remains designated nonattainment pending a further redesignation action.

V. EPA's Requirements for Compliance with the 2008 Lead NAAQS

Under EPA regulations at 40 CFR 50.16, the 2008 primary and secondary Pb standards are met when the maximum arithmetic 3-month mean concentration for a 3-year period, as determined in accordance with 40 CFR part 50, Appendix R, is less than or equal to $0.15 \mu\text{g}/\text{m}^3$ at all relevant monitoring sites in the subject area. Specifically, 40 CFR part 50, Appendix R establishes that in order to determine compliance with the 2008 Pb NAAQS, a design value for each monitor is compared to the NAAQS level. Therefore, the 2008 Pb NAAQS is met at a monitoring site when the identified design value is valid and is less than or equal to $0.15 \mu\text{g}/\text{m}^3$. The design value for the 2008 Pb NAAQS is the highest valid 3-month arithmetic lead concentration for the 38-month period consisting of the most recent 3-year calendar period (36 months) plus the two preceding months for a total of 36 3-month periods.

including the applicable attainment date and the deadline for States to submit a plan to meet the substantive attainment-related requirements of subpart 1.

Only data from Federal Reference Method (FRM) or Federal Equivalent Method (FEM) monitors meeting the requirements of 40 CFR part 58 and submitted to EPA's Air Quality System (AQS) can be used in calculating a design value. A lead design value that meets the 2008 Pb NAAQS is considered useable (e.g. valid) if it encompasses 36 consecutive valid 3-month means from a monitoring site. On the other hand, a violating lead design value that is greater than the NAAQS level is useable no matter how many valid 3-month means in the 3-year period it encompasses; that is, a violating design value is useable even if this highest 3-month mean is the only valid 3-month mean in the 3-year time frame.

Additionally, a 3-month mean is considered complete and valid if the average of the data capture rate of the three individual monthly means (3-month data capture rate) is greater than or equal to 75 percent. As an exception, a 3-month mean that does not meet this completeness requirement can still be considered valid and complete, if it passes either of the two "data substitution" tests identified in section (4)(c)(ii) of 40 CFR 50, Appendix R. Additional explanation of EPA's monitoring requirements to determine compliance with the 2008 Pb NAAQS can be found in the TSD for this proposed rulemaking action.

VI. EPA's Evaluation of Air Quality Data for the Lyons Area

The Lyons Area consists of two monitoring locations, Lyons Boro with a single FEM monitor and Lyons Park with two collocated FEM monitors. The Commonwealth of Pennsylvania submitted into EPA's AQS database quality assured, quality controlled, and certified air quality monitoring data for 2011-2013 for the 2008 lead NAAQS. EPA has reviewed this ambient air monitoring data for lead for the Lyons Area in accordance with the provisions of 40 CFR part 50,

Appendix R. The monitoring data evaluated for the Lyons Area corresponds to the 36 3-month means collected during the thirty-eight (38) months from November 2010 to December 2013, which is the most recent certified, quality-assured, quality-controlled data available for the Area. Table 1 shows the 2011-2013 lead design values for the Lyons Area monitors, which are based on 36 3-month means for this 3-year period.

Table 1. 2011-2013 Design Values for Lyons Area Monitors

Site Name	AQS Site ID	2011-2013 Design Values ($\mu\text{g}/\text{m}^3$)
Lyons Boro	42-011-0021	0.05*
Lyons Park	42-011-0022	0.04

*The design value for Lyons Boro includes incomplete data for one 3-month period in 2011 and one 3-month period in 2012. EPA has deemed data for these incomplete 3-month periods valid for computing the site's design value. Further explanation is provided in the TSD for this proposed rulemaking action.

Consistent with the requirements contained in 40 CFR part 50, EPA's review of these data indicates that the Lyons nonattainment area has attained the 2008 Pb NAAQS, with a 2011-2013 design value of $0.05 \mu\text{g}/\text{m}^3$ for the Area. Additional information on EPA's evaluation of the 2008 Pb NAAQS air quality data for the Lyons Area can be found in the TSD for this rulemaking action.

VII. Proposed Action

EPA is proposing to determine that the Lyons nonattainment area for the 2008 Pb NAAQS has attained the 2008 Pb NAAQS. EPA has reviewed the ambient air monitoring data for Pb, consistent with the requirements contained in 40 CFR part 50 and recorded in the EPA Air Quality System database for the Lyons Pb nonattainment area.

If EPA finalizes this proposed determination of attainment, the requirements for the Lyons Area to submit an attainment demonstration, associated RACM, an RFP, contingency measures and other planning requirements related to attainment of the standard shall be suspended for so long as the Lyons area continues to attain the 2008 Pb NAAQS.

VIII. Statutory and Executive Order Reviews

This action proposes to make a determination of attainment based on air quality, and would, if finalized, result in the suspension of certain federal requirements, and would not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed determination of attainment for the Lyons Area for the 2008 Pb NAAQS does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Lead, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401 et seq.

Dated: July 25, 2014.

William C. Early, Acting
Regional Administrator,
Region III.

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